

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

	)	
Proceeding by the Department of Telecommunications	)	
And Energy on its Own Motion to Implement	)	
The Requirements of the Federal Communications	)	
Commission's Triennial Review	)	D.T.E. 03-60
Order Regarding Switching for Mass Market	)	
Customers	)	
	)	

**COMMENTS OF ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. ("Allegiance"), through its attorneys, submits these comments pursuant to the Department's Notice of Investigation, issued August 26, 2003 ("Notice"). In its Notice, the Department requested comments concerning procedural matters, such as the number, format, scope, and timing of the 9 month proceedings to address switching for mass market customers as delegated to the states in the FCC's *Triennial Review Order*.<sup>1</sup>

Allegiance is a national facilities-based integrated communications provider that offers a competitive, one-stop-shopping package of telecommunications services, including local, long distance and Internet services, to business, government and other institutional customers in 36 metropolitan areas across the United States. Allegiance targets the needs of small to medium-sized businesses, which have typically been

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<sup>1</sup> *Report and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338 (*rel.* August 21, 2003) ("*Triennial Review Order*" or "*TRO*").

underserved by the incumbent local exchange carriers, and large businesses with multiple locations. In Massachusetts, Allegiance provides service in the Boston market through its local operating subsidiary Allegiance Telecom of Massachusetts, Inc. Allegiance provisions its services by using its own switches in combination with unbundled loops and transport (“UNEs”) purchased from ILECs. In Massachusetts, Allegiance provides approximately 20% of all CLEC lines provisioned over UNE loops.<sup>2</sup> On a nationwide basis, in states in which it operates, Allegiance provides 9% of all CLEC lines utilizing UNE loops.<sup>3</sup>

Given Allegiance’s position as one of the largest facilities-based providers in the United States and its extensive use of UNEs, the *Triennial Review Order* and this Department’s determinations pursuant to the *TRO*’s delegations to the states will have a significant impact on Allegiance’s business. Accordingly, Allegiance offers the following comments and suggestions in responding to the Department’s invitation for input in designing the Department’s processes for implementing the *TRO*.

## **9-MONTH PROCEEDING**

### **Scope**

The *TRO* directs the Department to undertake two 9-month proceedings. The mass market local circuit switch proceeding will provide ILECs and/or CLECs an

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<sup>2</sup> Calculated by using Allegiance internal line counts as of June 2003 and the FCC Report on Local Telephone Competition as of December 31, 2002 (released June 12, 2003).

<sup>3</sup> *Id.*

opportunity to challenge the FCC's presumption that competitors serving the mass market are impaired without the ability to procure unbundled switching from ILECs. The loop and transport proceeding will provide ILECs and/or CLECs an opportunity to challenge the FCC's presumption that competitors are impaired without the ability to purchase unbundled high-capacity loops and dedicated transport.<sup>4</sup>

While the scope of the issues investigated should follow the FCC's general and more granular guidelines issued in the *TRO*, Allegiance further suggests that, to the extent impairment is found in either proceeding, the Department order corrective action to eliminate or reduce the factors that cause impairment in particular areas. For example, although Allegiance is a facilities-based CLEC utilizing its own switches to serve small and medium business customers (both in the mass market and the enterprise market), our ability to serve a broader geographic area in Massachusetts and other states is constrained by the costs of collocation, especially the costs of power. Other issues, such as the cost of interoffice transport, may make it difficult for CLECs to expand their reach using EELs and should be investigated by the Department in these proceedings. Finally, issues such as the time required to make minor upgrades to existing collocations, such as the addition of APOT equipment, hinder a facilities-based competitor's ability to serve the market by preventing it from addressing growing demand for its services in a timely fashion.<sup>5</sup> It is important that the Department both evaluate how these ILEC practices impair facilities-based CLECs from serving a larger footprint than what they serve today and order the

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<sup>4</sup> The Department stated in its September 9, 2003 Procedural Memorandum that it will address both sets of issues in D.T.E. 03-60.

<sup>5</sup> In Massachusetts, even simple changes to a CLEC's collocation arrangement require 90-120 days advance notice to the ILEC. The changes in most instances do not require any construction and can be accomplished in less than one day. Artificial delays, such as unduly long lead times, can seriously hinder a facilities-based competitor's ability to address market demand.

ILECs to change practices where appropriate in order to allow facilities-based CLECs economically to serve a larger geographic area in the state.

#### Initiation

The Department should require that any ILEC or CLEC wishing to challenge the presumption of impairment file a petition to start a proceeding by October 2, 2003. Any petition on the loop and transport issues should state with specificity the particular routes for which the petitioning party is claiming no impairment. The proceeding should be limited to an evaluation of the specific routes claimed by the petitioner.

#### Discovery/ Data

The *TRO* requires this Department to define the markets for evaluating impairment.<sup>6</sup> The Department has the discretion to determine the contours of the relevant markets, but the FCC has said that the Department may not define the market as encompassing the entire state.<sup>7</sup> In doing so, the FCC has indicated that the Department must take into consideration “the locations of customers actually being served (if any) by competitors, the variable factors affecting competitors’ ability to serve each group of customers, and competitors’ abilities to target and serve specific markets economically and efficiently using currently available technologies.”<sup>8</sup>

Accordingly, to determine the relevant geographic area to include in each market, the Department should first determine where competitors are utilizing their own local

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<sup>6</sup> *TRO* at para. 495.

<sup>7</sup> *TRO* at para. 495.

<sup>8</sup> *TRO* at para. 495.

switching in Massachusetts. Initially, the Department should request such information from Verizon. Verizon knows where it is supplying unbundled loops. Additionally, the Department should ask facilities-based CLECs where they serve customers using their own switches.

The most efficient manner to get data from CLECs is by the Department's serving standardized data requests<sup>9</sup> to all certified local exchange carriers in Massachusetts. The Department should collect this information on a wire center basis and then overlay it onto geographic markets that the Department has already established, such as access areas used to develop loop pricing across the state.<sup>10</sup> Depending on how the data match up, it may be appropriate to use these existing market areas for the impairment analysis. To the extent that existing market definitions can be used, they will conserve everyone's resources and streamline the process.

### Protective Order

A protective order should be issued to protect individual company data.

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<sup>9</sup> Allegiance has urged NARUC TRIP, working with state commissions, to develop standardized data requests to minimize the burden on carriers of providing data to the states during these proceedings. Although the facts may vary among places, the questions should be the same.

<sup>10</sup> Using existing market divisions will allow the Department to avoid having to reinvent the wheel with respect to the impairment analysis. Moreover, since the access areas will generally reflect density of lines and facilities-based CLECs generally start by serving the highest density zones first, they may also have a direct correlation to where competition exists.

### Hearing Format

Allegiance submits that a full evidentiary hearing with pre-filed testimony, cross-examination and post hearing briefing is necessary for the Department to make an informed decision.

## **OTHER PROCEDURAL ISSUES**

### Coordinating Discovery and Schedules with Other States

The *TRO* outlines specific factors and triggers that states must consider in their impairment analyses. Given the uniformity of such standards, Allegiance strongly urges the Department to coordinate with other states in developing standard sets of data requests. Unquestionably, the nation-wide proceedings will create a substantial, if not unprecedented, drain on commission and carrier resources. Everyone will benefit to the extent that data requests are standardized. Standardization will minimize the need to respond to different data requests and make comparisons between different states more feasible. Allegiance also strongly recommends that Departments coordinate their schedules for returning data and scheduling hearings to avoid unnecessary conflicts.

## **CONCLUSION**

As a facilities-based CLEC utilizing its own switches to serve both enterprise and mass market business customers, Allegiance is well positioned to assist the Department to implement the Triennial *Review Order*.

Respectfully submitted,

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